FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

First Appeal Nos. 201/2006 & 218/2006

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Shri B.N. Mohta, Adv. for appellant.
Shri R.K. Deshpande, Adv. for R-1.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 15th June, 2007.

Both these second appeals are being considered for admission and disposed of by this common order as the facts involved in both these second appeals are almost identical.

The appellant is the original defendant no. 2. Two independent suits were filed by the respondent no.1 in these two second appeals against the M.S.E.B. for grant of permanent injunction restraining the M.S.E.B. from disconnecting the electric supply to the premises in occupation of the plaintiffs. The defendant- M.S.E.B. had issued individual notices to the respondent no.1 herein, calling upon them to show cause as to why the electricity supply to their premises should not be discontinued. The plaintiffs claimed to be running their business in the suit premises and it was their case that they were regularly paying the electricity

charges to the defendant- M.S.E.B.

The defendant no.1 filed written statement and contested the claim of the plaintiff. It was admitted by the defendant no.1 that the plaintiffs were its consumers since the year 1984 and were regularly paying the electricity charges. The other adverse allegations made in the plaint were denied and it was pleaded by defendant no.1- M.S.E.B that the notice which was the subject matter of challenge before the Court was issued only because No Objection Certificate by the landlord was not supplied by the plaintiffs at the time of seeking the electricity connection. The defendant no.2- present appellant was joined as party defendant at his request and it was the case of the defendant no.2 that he was the owner of the suit property. As No Objection Certificate was not taken from him before grant of electricity connection, he had made complaints to defendant no.1- M.S.E.B. and acting upon his complaints, the M.S.E.B. had issued the notices to the plaintiffs.

In one of the cases, none entered into the witness box on behalf of M.S.E.B. while in the other suit, an employee of the M.S.E.B. was examined. It was admitted that the plaintiffs were the consumers of defendant no.1- M.S.E.B. since the year 1984 and were paying electricity charges without any default. While considering the issue of validity of the notice,

Exh. 37, issued by M.S.E.B. to the plaintiffs, the Courts considered the admitted position that the plaintiffs were using the electric energy from 1984 till 1999 and the M.S.E.B. was not justified in issuing the notice for the first time in the year 1999. The Courts then observed that there was nothing in the Indian Electricity Act to show that the Electrical Inspector had power or authority to issue directions to the M.S.E.B. to disconnect the electric supply. The Courts, therefore, held that issuance of the directions to the M.S.E.B. for disconnection of the electric supply on the ground that there was no consent of the owner prior to seeking the electric connection was not contemplated under Section 26 of the Indian Electricity Act. The Courts, therefore, rightly held that the Electrical Inspector had no jurisdiction to issue such orders.

It is also necessary to take notice of the fact that the employee of M.S.E.B. had admitted in his cross-examination that M.S.E.B. does not grant electricity connection to a consumer unless and until it is satisfied that the conditions for grant of the electric connection are complied with. The witness further admitted that he had seen the 7/12 extract of the suit property. He further admitted that he cannot say as to whether the plaintiffs had produced the entire documents at the time of presentation of the application for grant of electricity connection.

The Courts, therefore, were justified in holding that the defendant no.1- M.S.E.B. had illegally tried to disconnect the electricity supply. The Courts then observed that so far as the question of demand of No Objection Certificate from the defendant no.2, to the plaintiffs was concerned, there was ample evidence on record to show that there was a series of litigations between the parties and the relations between the plaintiffs and the defendant no.2 were not cordial and, therefore, the M.S.E.B. could not have asked for No Objection Certificate from the plaintiffs after a lapse of 15 years from the date of supply of electricity connection to the plaintiffs. The trial Court categorically recorded that the Electrical Inspector and the defendant no.1 had acted on the advice of the defendant no.2 and only with an intention to harass the plaintiffs, notice exh.44 was got issued. The Courts then observed that there was nothing in the Indian Electricity Act to show that for providing the electric meter to a person, a No Objection Certificate from the landlord is mandatory.

A perusal of the Condition No. 32 of the Maharashtra State Electricity Power Conditions and Miscellaneous Charges for Supply of Electrical Energy, shows that the Board has right to discontinue supply to a consumer only if the consumer contravenes any of the provisions of the Act or of the Conditions for Supply or commits a

breach of his agreement with the Board. Such is not a case here. In view of Condition No.2 (b) of the Conditions of Supply of Electrical Energy, it is necessary for a consumer to produce documentary evidence to show that he is either the lawful owner or occupier of the premises. This condition, however, does not stipulate that it is necessary for an occupier to produce No Objection Certificate from the owner of the property. It is not disputed that the plaintiffs were in occupation of the property and were provided with the electric connection for more than 15 years prior to the issuance of the notice which was challenged in the two suits.

The findings recorded by both the Courts are just and proper. They do not give rise to any substantial question of law. Second appeals, therefore, fail and are dismissed with no order as to costs.

JUDGE

RMP